

Section 21904. Preclearance of Documents.

(a) Definitions.

As used in this section, the following words shall have the following definitions.

(1) "Business day" is a day Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding state holidays in which the Secretary of State is closed for business.

(2) "Customer" is a customer of the Secretary of State and includes, but is not limited to, a principal, agent, messenger or attorney.

(3) "Eligible document" is a document submitted to the Secretary of State pursuant to ~~one of the following sections of the California Corporations Code: sections 200, 5120, 5121, 7120, 7121, 9120 or 9121 (articles of incorporation); sections 1103, 1108, 6014, 8014 or 9640 (agreement of merger); section 1110 (certificate of ownership); section 2105 (statement and designation); section 2101 (foreign name registration); section 2107 (amended statement and designation); section 2112 (certificate of surrender); section 1505 (corporate agent for service of process); sections 109 or 5007 (certificate of correction); section 401 (certificate of determination); sections 905, 906, 5814, 5815, 7814, 7815 or 9620 (certificate of amendment); sections 910, 5819 or 7819 (restated articles of incorporation); sections 1901, 6611, 8611 or 9680 (certificate of election); sections 1905, 6615 or 8615 (certificate of dissolution); or section 1902, 6612 or 8612 (certificate of revocation).~~ the California Corporations Code, the California Financial Code, or the California Insurance Code.

(4) "Filing response" is a written response prepared by the Secretary of State when documents submitted for filing are returned without filing due to the fact that the document is found not to conform to the law.

(5) "Preclearance" is a determination by the Secretary of State, made in writing, that an eligible document submitted for review prior to an intended filing date, conforms to law within the meaning of the applicable sections of the ~~California Corporations Code, code under which it is intended to be filed,~~ and will be filed when the eligible document is submitted for filing, if the requirements set forth in paragraph (2) of subdivision (d) are satisfied and the Secretary of State is able to make the determinations set forth in paragraph (3) of subdivision (d).

(6) "Precleared document" is a document that has received a preclearance from the Secretary of State pursuant to section ~~12904~~ 21904 of these regulations.

(7) "Preclearance response" is a written response prepared by the Secretary of State to a request for preclearance.

(8) "Preclearance version" is the form of an eligible document that is submitted to the Secretary of State for preclearance.

(b) The Secretary of State in providing preclearance services for a fee established pursuant

to this section, if such services do not cause disruption or delay in the process of normal handling of documents, may suspend all or any portion of the preclearance services, as set forth in this section, when deemed necessary due to a high volume of workload, staff shortages or equipment malfunction. Notice of the suspension of all or any portion of the preclearance services shall be communicated to the public in a reasonable manner. Suspension of all or any portion of the preclearance services may be for a specified or indefinite period of time, as denoted in the notice.

(c) Documents submitted for preclearance shall occur as described in this subdivision.

(1) To submit an eligible document for preclearance a customer shall personally deliver to the Sacramento office of the Secretary of State the following:

(A) ~~Two copies~~ One copy of the eligible document in the form for which preclearance is sought;

(B) Requisite preclearance fee, as provided in paragraph (8) of subdivision (c);

(C) Statement as to the class of service requested, as provided in paragraph (7) of subdivision (c);

(D) Statement as to the preferred means of delivery of the preclearance response, as provided in paragraph (9) of subdivision (c); and

(E) Name and telephone number of the customer to whom questions, if any, regarding the document or service requested may be directed.

(2) An eligible document submitted to the Secretary of State for preclearance shall contain the name of the ~~corporation~~ entity. An eligible document may be submitted to the Secretary of State for preclearance with designated blank spaces for information that does not affect the determination of the Secretary of State as to whether the eligible document will conform to law when it is properly completed, signed and, if required, acknowledged or verified. Such information may include, but is not limited to, names of executing officers, required signatures, and dollar amounts.

(3) After receipt of an eligible document for preclearance, the Secretary of State shall issue a preclearance response within the time period for the requested class of service, as provided in paragraph (7) of subdivision (c). The Secretary of State shall deliver the preclearance response by the requested means of delivery, as provided in paragraph (9) of subdivision (c). The Secretary of State shall not be responsible for ensuring that the preclearance response is delivered within the time period for the requested class of service, as delivery may take additional time to reach a customer due to the means of delivery or the fact that the customer is not available to receive it.

(4) When preclearance of an eligible document is denied, the Secretary of State shall state in the preclearance response the reason or reasons for the denial of preclearance.

(5) If it appears to the Secretary of State that a preclearance response cannot be issued

within the time period for the requested class of service, the Secretary of State shall contact the customer concerning the appropriate action to be taken, and refund the preclearance fee, if the customer requests return of an eligible document without a preclearance response.

(6) A customer may resubmit a revised version of an eligible document that was previously submitted for preclearance, in accordance with the procedures set forth above, one or more times, provided that the applicable fee accompanies each submission. To assist the Secretary of State in reviewing the eligible document, a customer shall submit the preclearance response with the revised version of the eligible document.

(7) The classes of preclearance service for an eligible document submitted pursuant to subsection (C) of paragraph (1) of subdivision (c) are the following:

(A) Class I service: a preclearance response shall be issued within twenty-four (24) hours of receipt by the Secretary of State of an eligible document, excluding weekends and state holidays in which the Secretary of State is closed for business;

(B) Class II service: a preclearance response shall be issued within seventy-two (72) hours of receipt by the Secretary of State of an eligible document, excluding weekends and state holidays in which the Secretary of State is closed for business;

(C) Class III service: a preclearance response shall be issued within five (5) business days of receipt by the Secretary of State of an eligible document; and

(D) Class IV service: a preclearance response shall be issued within ten (10) business days of receipt by the Secretary of State of an eligible document.

(8) The preclearance fees shall be the following: (A) \$500 for Class I service; (B) \$400 for Class II service; (C) \$300 for Class III service; and (D) \$250 for Class IV service.

(9) Delivery of a preclearance response pursuant to subsection (D) of paragraph (1) of subdivision (c) shall be by one of the following means:

(A) The preclearance response shall be available at the Sacramento office of the Secretary of State for the customer to collect in person;

(B) The preclearance response shall be transmitted by telephone facsimile, if a telephone facsimile number provided by the customer accompanies the preclearance request;

(C) The preclearance response shall be transmitted by electronic mail, if an electronic mail address provided by the customer accompanies the preclearance request;

(D) The preclearance response shall be placed in the mail to be delivered by overnight courier, if a prepaid, pre-addressed overnight courier envelope provided by the customer accompanies the request for preclearance; or

(E) The preclearance response shall be placed in the mail to be delivered by the United States Postal Service first class mail.

(d) Precleared documents shall be filed as described in this subdivision.

(1) A precleared document may be submitted to the Secretary of State for filing through the normal filing process, special handling provisions provided for in section 21903 of these regulations or expedited filing provisions provided for in section 21905 of these regulations.

(2) To submit a precleared document for filing with the Secretary of State, a customer shall submit the following:

(A) Completed document, containing ~~original~~ the required signatures;

(B) Two copies of the document;

(C) Copy of the preclearance response;

(D) Requisite filing fee; and

(E) Requisite special handling fee or expedited filing fee, if applicable.

(3) The review of a document that has received a preclearance shall generally be limited to the following determinations:

(A) Whether any changes have been made to the document since the preclearance was issued;

(B) Whether all designated blank spaces, if any, in the preclearance version have been completed and, if not, whether the failure to complete such information causes the document not to conform to law; and

(C) Whether the eligible document has been signed and, to the extent required by law, verified or acknowledged, in accordance with the applicable provisions related to its execution.

(4) If the Secretary of State determines that a precleared document submitted for filing does not conform to law, the filing response shall state the reason or reasons for the return of the document.

NOTE: Authority cited: Section 12182, Government Code; ~~and Budget Act, ch. 52, Stat. of 2000~~ ch. 47, Stat. of 2006; and Section 17.1, Corporations Code. Reference: Section 12182, Government Code; and Section 17.1, Corporations Code.